

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 2/4/2014	(3) CONTACT/PHONE Airlin M. Singewald, Planner III / (805) 781-5198	
(4) SUBJECT Hearing to consider an appeal by Mesa Dunes Mobile Home Estates, LLC of the Planning Department's determination of application incompleteness for Vesting Tentative Tract Map 3052 and Conditional Use Permit SUB2013-00031. The proposed project is located at 765 Mesa View Drive, in the Palo Mesa village. District 4.			
(5) RECOMMENDED ACTION It is recommended that the Board adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Department and denying the applicant's appeal.			
(6) FUNDING SOURCE(S) Planning Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent { } Presentation {X} Hearing (Time Est. <u>150 minutes</u>) { } Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS {X} Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5 Vote Required { } N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe			
(18) SUPERVISOR DISTRICT(S) District 4			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Airlin M. Singewald, Planner III

DATE: 2/4/2014

SUBJECT: Hearing to consider an appeal by Mesa Dunes Mobile Home Estates, LLC of the Planning Department's determination of application incompleteness for Vesting Tentative Tract Map 3052 and Conditional Use Permit SUB2013-00031. The proposed project is located at 765 Mesa View Drive, in the Palo Mesa village. District 4.

RECOMMENDATION

It is recommended that the Board adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Department and denying the applicant's appeal.

DISCUSSION

On October 23, 2013, Mesa Dunes Mobile Home Estates, LLC filed an application with the Department of Planning and Building for Vesting Tentative Tract Map 3052 and Conditional Use Permit SUB2013-00031 to convert an existing 304 unit mobile home park to resident ownership. Staff reviewed the application for completeness and informed the applicant in a letter, dated November 23, 2013, that the application could not be accepted as complete for processing for the following reason:

"The application contains insufficient evidence to show that the resident support survey was conducted in accordance with an agreement between the applicant and the Mesa Dunes Homeowners' Association, as required by subsection (d)(2) of the California Government Section 66427.5."

On December 5, 2013, the applicant appealed this determination to your Board. Pursuant to Section 21.02.070 of the Real Property Division Ordinance, Title 21 of the County Code, applicants may appeal application completeness determinations directly to the Board of Supervisors. This section also stipulates that the Board of Supervisors shall make a final written determination on the appeal not later than sixty days after receipt of the appeal. This is a requirement of the State Permit Streamlining Act for appeals relating to application completeness. To meet the 60 day requirement, staff originally scheduled the appeal for January 7, 2014; however, due to a scheduling conflict, the applicant requested a later hearing date, and waived the 60 day time limit until February 4, 2014 and, if a continuance is necessary, until the next scheduled Board of Supervisors meeting date.

Survey of Support

Section 21.02.050 of the Real Property Division Ordinance requires applications for condominium conversions to include a survey of support that documents the amount of residential support for the proposed subdivision in compliance with Government Code Section 66427.5(d). The Government Code specifies that the survey "shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner."

On June 10, 2013, the park owners sent a letter to the park residents introducing the proposed conversion and inviting them to attend an informational meeting on June 17, 2013. According to representatives of the HOA, the applicant's attorney informed the HOA president, Sharon McMahan, at the June 17, 2013 informational meeting that the HOA Board would be required to hold a meeting on the next day (June 18, 2013) if they wanted to see the survey of support that would be sent out. According to Ms. McMahan, she objected that they needed more time to properly call an HOA Board meeting, to study the issue, and to obtain legal advice. However, believing they had no other choice, Ms. McMahan convened an HOA Board meeting for the next day. The applicant contends that the HOA Board approved the survey of support with a "show of hands" vote at the June 18th meeting. This fact is disputed by five of the HOA Board members who were present at the meeting.

The survey was initiated on June 24, 2013, and ballots were due two weeks later. The survey contained five separate check boxes: one indicating support of the conversion, two indicating support of the conversion with qualifiers (e.g. "I support the survey but am low income and require financial assistance to purchase my space."), one declining to respond, and one not supporting the conversion. The check box not supporting the conversion is the only one that asked for a written explanation.

Of the 299 resident households, 168 (56 percent) responded. The survey showed that 99 residents (59 percent) supported the conversion; 35 residents (21 percent) did not support the conversion; and 34 residents (20 percent) declined to respond. Staff has independently reviewed the survey responses and has verified the results. See Table 1.

Table 1: Summary of Survey Responses

#	Response	Tally (%)
1.	I support the change of ownership to a resident-owned park	43 (26%)
2.	I support the change of ownership to a resident-owned park but am lower income and will need financial assistance to purchase my unit.	38 (23%)
3.	I support the change of ownership to a resident-owned park but at this time believe I would remain and rent.	15 (9%)
Subtotal		96 (59%)
4.	I decline to respond at this time.	35 (21%)
5.	I do not support the change of ownership of the park to a resident owned park.	34 (20%)
Subtotal		69 (41%)

Why is the survey important?

The courts have ruled that local agencies are preempted from imposing requirements on mobile home park conversions that exceed those prescribed in the Subdivision Map Act. This means local agencies have limited ability to deny applications for conversions based on inconsistency with local general plan policies or land use ordinance standards that exceed the provisions of the Subdivision Map Act. However, there is one issue that the state legislature left for local jurisdictions to interpret and administer when reviewing these kinds of conversions. Under subsection (d) of Section 66427.5, the results of the survey of support are required to be submitted to the local agency upon filing of the tentative map to be considered as part of the hearing on the subdivision. Courts have interpreted this requirement as allowing the local agency to consider the results of the survey with an eye toward determining if the application is a bona fide conversion to resident ownership or is really a sham to avoid local rent control ordinances.

Furthermore, according to case law, once the County accepts the application as complete, it cannot later deny the proposed conversion based on lack of evidence that the survey was properly conducted. This means that, if staff had accepted the application as complete, the Planning Commission and Board of Supervisors would not have been able to consider the adequacy of the survey during public hearings on the proposed conversion.

Incompleteness Determination

The crux of the appeal is whether the survey of support was conducted in agreement with the Mesa Dunes Homeowners' Association as required by State law. After meeting with representatives of the Applicant and the HOA Board and reviewing documentation submitted by both parties, staff determined that the application lacks sufficient evidence to show that the Association agreed to the survey.

Staff made this determination based on the following information:

- **The HOA Board disputes the agreement.** According to written statements by five of the HOA Board members, the HOA never approved an agreement with the park owner regarding the survey, as required by Section 66427.5(d). The appeal contends that at the June 18, 2013 meeting the Association approved the survey with a "show of hands" vote. However, according to the written statements of a majority of HOA Board members, it was not made clear to them that they were "voting" to approve an "agreement" and that the "show of hands" could not possibly constitute a vote because there was no motion or second as required by the HOA Board's bylaws. The "show of hands" vote was never memorialized in a written agreement signed by the HOA or recorded in meeting minutes.

The appeal contends that the HOA Board has a pattern of not following its bylaws and that the HOA Board's failure to comply with its own internal requirements cannot render the agreement invalid. However, the fact that the HOA Board did not follow their bylaws can be seen to support the HOA's claim that they didn't realize they were voting on the survey. Also, the appeal does not substantiate its statement that the HOA Board frequently violates its bylaws, other than to note that no minutes are available from the June 18, 2013 meeting.

- **There is no written agreement approving the survey.** The appeal contends that the application contains evidence demonstrating that it has fully complied with the requirements of Section 66427.5(d), including a copy of the survey ballot itself, a chart showing the results of the resident survey, and a letter sent by the applicant's attorney to the HOA Board stating that they approved the survey. The appeal also references the cover letter sent to the residents with the survey, which states that the HOA Board approved the survey. In addition, the applicant asserts that the HOA Board members' participation in the survey and the fact that no written objection to the form of the survey was provided until after the results of the survey were known supports the inference of an agreement. However, in light of the fact that a majority of the HOA Board members have provided written statements that they never agreed to the survey, staff determined that the applicant's evidence was inadequate to establish the existence of the required agreement.

The appeal also disputes that Section 66427.5(d) requires the agreement to be in writing. Section 66427.5(d) does not specify that the agreement shall be in writing, but it is traditional to record agreements in writing, especially when an agreement is necessary to establish compliance with Section 66427.5. The appeal does not explain why the applicant never sought written agreement from the HOA Board. And given the written statements from the HOA Board members disputing the existence of an agreement, staff could not make a determination that the application was complete.

- **The applicant's attorney obfuscated the meaning of the survey.** According to HOA Board members, when the applicant's attorney presented the survey of support at the June 18, 2013 board meeting, they downplayed its importance by describing it as a mere formality required by the State to determine preliminary interest and to what extent residents would require financial assistance to purchase their spaces. If true, this characterization of the survey as an inconsequential indicator of interest is contrary to Section 66427.5(d), which states that the survey of support "shall be obtained pursuant to a written ballot." The HOA Board members argue that, as a voting instrument, a ballot is, by definition, consequential. In addition, Section 66427.5(d) allows local agencies to consider the ballot results when evaluating a proposed conversion, making the survey important to the County's review of the project.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel reviewed the resolution as to form and legal effect.

FINANCIAL CONSIDERATIONS

The applicant has paid the appeal fee of \$850 to partially offset staff time required to prepare this staff report. The balance of funding comes from the Department general fund support.

RESULTS

If your Board denies the appeal and upholds the Department's incompleteness determination, the application for Vesting Tentative Tract Map 3052 and Conditional Use Permit SUB2013-00031 would be deemed incomplete. To make the application complete, the applicant would be required to enter into an agreement with the Mesa Dunes Homeowners Association and conduct a new survey of support pursuant to subsection (d)(2) of the California Government Code Section 66427.5.

Alternatively, if your Board upholds the appeal, the application would be deemed complete and staff would continue processing the project. When evaluating the project, the Planning Commission would consider the June 2013 survey of support, which indicates that 59 percent of residents support the conversion. Based on case law, after deeming the application as complete, the County would not be able to revisit the adequacy or validity of the survey of support during future hearings on the project.

ATTACHMENTS

1. Board Resolution Denying Appeal and Upholding Planning Department Determination of Application Incompleteness
Exhibit A - Findings
2. Vicinity Map
3. Application Incompleteness Letter; November 23, 2013
4. Government Code Section 66427.5
5. Letter from Richard Close to County Planning requesting a later hearing date; December 19, 2013
6. Letter from Richard Close to County Planning; November 19, 2013
7. Letter from William Constantine to County Planning; November 6, 2013
8. Letter from William Constantine to County Planning; September 3, 2013
9. Appeal from Mesa Dunes Mobile Home Estates, LLC and attachments; December 5, 2013
10. Application for Vesting Tentative Tract Map 3052 and Conditional Use Permit SUB2013-00031 (Clerk's File)